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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re E.F., a Person Coming Under the Juvenile Court Law.	D074919
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. M.F., Defendant and Appellant.	(Super. Ct. No. NJ15343)

APPEAL from orders of the Superior Court of San Diego County, Michael Imhoff, Judge. Affirmed.

Suzanne M. Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, Caitlin Rae, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

M.F. (Mother) appeals orders in the Welfare and Institutions Code section 300, subdivision (c)[1] juvenile dependency case of her minor child, E.F., finding: (1) at a section 387 disposition hearing that there were no reasonable means by which E.F.'s physical health could be protected without removing E.F. from Mother's physical custody and that Agency made reasonable efforts to prevent or eliminate the need for her removal; and (2) at the subsequent 12-month permanency hearing that reasonable reunification services had been provided to Mother. On appeal, Mother contends there is insufficient evidence to support those findings. Based on our reasoning *post*, we disagree and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, E.F. was born. In 2011, E.F. was brought into protective custody because of domestic violence between her biological parents. In 2013, E.F. was adopted by Mother and A.F. (Father).[2] At that time, Mother and Father had three other adopted children, all of whom were older than E.F. Two of their other three children were physically disabled and developmentally delayed.

In August 2017, the San Diego County Health and Human Services Agency (Agency) filed a section 300, subdivision (c) juvenile dependency petition alleging E.F., then seven years old, was suffering, or was at substantial risk of suffering, serious

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1 All statutory references are to the Welfare and Institutions Code unless otherwise specified.

2 On February 14, 2019, we dismissed Father's appeal in this case because he passed away on January 19, 2019. Therefore, Mother is the sole appellant.

emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward herself or others as a result of Mother's conduct. In particular, the petition alleged that E.F. had an emotional disorder, including but not limited to extreme anxiety and violent outbursts requiring mental health treatment, and had a prior diagnosis of attachment disorder. It alleged Mother exacerbated E.F.'s mental health needs by threatening to abandon her and E.F.'s mental health had deteriorated to such a degree that she stated she wanted to be hospitalized to "get better." It alleged Mother stated that E.F. had expressed suicidal and homicidal ideations. It further alleged that the deterioration in E.F.'s mental health was largely due to Mother's unwillingness or inability to meet E.F.'s emotional needs and that E.F. did not have any parent capable of providing appropriate care as a result of Mother's conduct.

During the year leading up to the petition's filing, Agency had received 16 child abuse reports regarding Mother's ability to safely care for E.F. and raising concerns that Mother may be a contributing factor to E.F.'s emotional health. In particular, one referral stated Mother reported that E.F. threatened to kill herself. Mother felt unsafe in the home with E.F. and Mother sometimes locked E.F. in a room for everyone's safety. Mother refused to call law enforcement, hysterically stated no one would do anything until E.F. killed herself, and screamed she would just call child welfare services to come take E.F. E.F. was heard in the background pleading that she did not want to go back to foster care.

In another referral, it was stated that E.F. was crying and asking Mother that if she went to the hospital and got better, whether Mother would want her. Mother told E.F.: "I

don't want you," "I am trying to get rid of you," and "I won't miss you and there are no good memories."

E.F.'s pediatrician believed that most of E.F.'s problems stemmed from Mother. He stated Mother wants to feel that E.F. is mentally ill, and he does not believe she is. He further stated that Mother is very stressful, abrasive, nonnurturing, and finger-pointing. He stated: "[E.F.] is convinced that she is sick because of what [Mother] does and he has seen [E.F.] go from a very delightful three and four-year-old and now she is six and wearing diapers and threatening [Mother], not because she has a mental illness. . . ."

E.F.'s therapist stated that Mother insisted that she write a letter recommending that E.F. be hospitalized, which the therapist refused to do. Staff members at E.F.'s school reported that on several occasions Mother told them she no longer wanted E.F., would like her out of her home, and asked what they would do if she did not pick her up from school. Mother made those statements in E.F.'s presence. During school, E.F. did not wear a diaper and performed well academically, socially, and behaviorally.

E.F.'s psychiatrist initially recommended that she be hospitalized, but later recommended that she remain with Mother and that the family receive intensive therapy. He stated that Mother told E.F. that she does not love her and was never going to be her mom. He diagnosed E.F. with reactive attachment disorder, attention deficit hyperactivity disorder, depressive disorder, enuresis, and encopresis. When E.F.'s emotional problems worsened, she could become physically aggressive and could impulsively run away from home.

In its detention report, Agency recommended that E.F. be detained out of the family home. Agency had unsuccessfully attempted to work with Mother in the past. Agency attached an April 2017 police report stating that Mother told the police officer that E.F. wanted to run away. In the officer's presence, Mother acted irrationally and yelled at E.F. to leave and run away. Mother was incoherent at times and stated she (Mother) wanted to be taken for a mental health evaluation. A caretaker told the officer that Mother and E.F. verbally argued and then E.F. stated she would run away. Infuriated, Mother grabbed E.F. by the feet and hair, dragged her toward the front door, pushed her out the door, and yelled that she should leave the house. Concluding that Mother was a danger to others, the officer transported Mother to a hospital where she was placed on a 72-hour hold for a mental health assessment.

At the detention hearing, the juvenile court found that a prima facie showing had been made that E.F. was a person described by section 300, subdivision (c) and that she should be detained outside of Mother's home. The court ordered that reunification services be provided, including counseling for Mother and therapy for E.F. with her current therapist.

In its October 2017 jurisdiction and disposition report, Agency stated that Mother had been seeing a psychiatrist since 2014 who recently had increased the dosage of her Prozac prescription. Mother also had participated in individual and family therapy with a psychologist. Agency recommended that E.F. be declared a dependent of the juvenile court, be placed in licensed foster care, and that her parents receive reunification services. An Agency social worker received a letter from Melissa Gutierrez, a school liaison,

stating she had concerns Mother was not effectively meeting E.F.'s emotional needs. In response to Mother's concerns about E.F.'s behavior, Gutierrez "reached out to the school and the placement to receive more information and explore potential supports. However, the behaviors that [Mother] cited (specifically, behaviors such as: yelling, hitting/punching, choking, throwing scissors, etc.) have not been witnessed by [E.F.'s] teacher, the school principal, the school's front office staff who interact with her daily, the school health clerk, any staff members at Polinsky Children's Center, nor myself." Agency attached to its report a copy of a 2014 petition to revoke Mother and Father's foster care license.[3] Mother's psychiatrist reported that he diagnosed Mother with an anxiety disorder and organic mood disorder. She was compliant with her prescribed medication and he considered her psychiatrically stable.

In a January 2018 addendum report, Agency stated that E.F. had been residing in her foster home since September 2017, and her behavioral issues had become less severe since that placement. Since November 2017, E.F. had been attending therapy with a TERM therapist. That therapist diagnosed her with an adjustment disorder with anxiety and attention deficit hyperactivity disorder.

At the January 2018 jurisdiction and disposition hearing, the court sustained E.F.'s dependency petition and found its allegations true by clear and convincing evidence. The

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[3] E.F.'s court-appointed special advocate (CASA) subsequently reported that Mother and Father's foster care license was revoked in 2014.

court declared E.F. a dependent, removed her from her parents' custody, and placed her in licensed foster care. It ordered that her parents be provided with reunification services.

In its July 2018 six-month review report, Agency stated that E.F. had begun a 60-day trial visit in the family home in late March when the foster father had a family emergency. In early June, Mother took E.F. to a mental health facility and stated that E.F. was having an uncontrollable tantrum and hitting others while she (Mother) was driving. The facility refused to admit or evaluate E.F. because she appeared calm and was not a danger to herself or others. A couple of weeks later, Mother called law enforcement about a tantrum E.F. was having. In response, E.F. was taken to a hospital for evaluation and was released the following day after she was found to be calm, cooperative, alert, and active.

E.F. had attended 16 sessions with her therapist. When asked to identify safe people in her life, E.F. named Father and her therapist. E.F. denied Mother was a safe person. Since returning to Mother's care on the trial visit, E.F. had inconsistently attended therapy, attending only three sessions in a 60-day period. E.F.'s demeanor had changed since returning to Mother's care. E.F. showed little eye contact, had slumped shoulders, and had less verbal engagement. On Mother's request, E.F.'s therapy was discontinued with that therapist and E.F. began therapy with a new therapist in June. Her new therapist reported that it was too early for her to draw any conclusions regarding E.F. However, the new therapist stated that Mother had requested several times that she write a letter recommending residential evaluation and treatment for E.F. based on her being "unmanageable" at home, but the therapist told her it was too early for her to make such a

recommendation. Mother told the new therapist that she was willing to try therapeutic behavior services (TBS) therapy, but was not confident it would work.

Agency also stated that although Mother had completed a parenting course and individual therapy with her TERM therapist, Mother did not show any insight or change in her behavior. Agency reported that since E.F.'s return to the family home, the issues that had led to E.F.'s removal had resurfaced. Agency initiated TBS in-home therapy, which was to begin in early July after a therapist was approved and would consist of three three-hour sessions per week. Agency stated that the family home was detrimental to E.F.'s emotional well-being as evidenced by calls to law enforcement, E.F.'s suicidal statements, her self-harm, and the dramatic increase in her negative behaviors. An Agency clinical psychologist recommended that Mother submit to a psychological evaluation to determine whether there was anything that was preventing Mother from making behavior changes and to determine the most appropriate services. Although the Agency psychologist recommended dialectical behavior therapy (DBT) for Mother, Mother had participated in that therapy in the past but had not made substantive changes in her behavior.

In July 2018, Agency filed a section 387 supplemental petition alleging that E.F.'s trial visit in the family home had not been effective in protecting or rehabilitating her, her mental health had been deteriorating, and recommending that E.F. be placed in a foster home. At the detention hearing, the court found a prima facie showing had been made on the section 387 petition and ordered that E.F. be detained outside the family home.

E.F. was placed in a foster home, but her foster parents gave notice requesting that she be moved for behavioral issues, such as lying and arguing with their biological child, and the inconvenience of taking E.F. to morning therapy appointments. In August, E.F. was placed in another foster home where she stabilized and performed well at school.

A psychologist evaluated E.F. and diagnosed her with generalized anxiety disorder, separate anxiety disorder, mild attention-deficit hyperactivity disorder, and complex trauma and stressor-related disorder. The psychologist excluded reactive attachment disorder at that time. She recommended parent-child therapy to address the parent-child relationship and to assist E.F.'s caregivers with tools to manage behavioral concerns.

Agency stated that Mother's focus on reactive attachment disorder was misdirected because E.F. did not have that diagnosis. It appeared that Mother's actions exacerbated E.F.'s negative behaviors. Mother lacked insight into the cause of E.F.'s negative behaviors and her (Mother's) role in escalating them. Mother had advocated for residential services for E.F., while minimizing any need for further services for herself. Agency stated that the focus of further services should be the parent-child relationship. However, because Agency was concerned about Mother's appropriateness for parent-child therapy, it recommended that she complete a psychological evaluation to determine the best course of services for Mother and E.F.

In a September 2018 addendum report, Agency stated that a social worker observed a supervised visit between Mother and E.F. On Mother's arrival, E.F.'s demeanor changed. E.F. became anxious and physically tense and took deep breaths.

The narrative describing Mother and E.F.'s statements during that visit showed that frequent and escalating power struggles continued between Mother and E.F. Mother initiated and perpetuated the power struggles. Agency stated that interactions between Mother and E.F. must be carefully monitored because Mother's passive-aggressive statements, sarcasm, and power struggles are the heart of the protective issue and potentially detrimental to E.F.

In an October 2018 report, E.F.'s CASA stated that E.F.'s current foster parents had expressed interest in adopting her if reunification efforts fail. Under her doctor's supervision, E.F.'s medications had been reduced and she had been doing better since those changes. E.F. was doing well with her in-home therapy and at school. According to E.F.'s foster mother, the monitor of a September 2018 visit between Mother and E.F. reported that during the visit Mother held E.F. like a baby and rocked her and also helped her wipe after using the toilet. E.F. became defiant after every visit with Mother.

In an October 2018 addendum report, Agency stated that Mother and Father had weekly supervised visits with E.F. E.F. disclosed that Mother has hit her, stating: "She always hits me when she's mad at me" and "My mom hits me a lot." The foster mother reported that after a visit with Mother, E.F. regressed and acted like a baby. For example, E.F. asked the foster mother to wipe her bottom after using the toilet, stating "I don't know how."

Mother submitted to a psychological evaluation by a private provider. Mother told the psychologist that at age 14 she suffered a traumatic brain injury from a car accident and had various residual effects, including anxiety, frustration, and anger during her late

teen years. The psychologist stated Mother was assertive, confrontational, and had a direct and somewhat abrasive presentation style. Mother's child abuse potential inventory score was significantly elevated, indicating that she maintained attitudes and beliefs that may not be consistent with those in the general population who are not considered a danger to children. The psychologist diagnosed Mother with depressive disorder with associated anxiety and traumatic brain injury. Mother's traumatic brain injury could affect her emotional functioning (e.g., irritability, easy frustration, tension, anxiety, and affective lability) throughout her life.

Agency recommended that Mother undergo a neuropsychological evaluation with a TERM provider to determine the extent of her traumatic brain injury and its current effects, if any, and what services could mitigate those effects. Although Mother had previously completed a parenting course, Agency referred her to Incredible Families (IF), a 15-week program consisting of supervised visits with E.F., therapy for E.F., and parenting education for Mother. E.F.'s IF therapist would observe interactions between Mother and E.F. and offer feedback to them. The IF program could be a precursor to conjoint or DBT with Mother and E.F. The Agency social worker stated that unlike Mother, E.F.'s foster parents were able to read E.F.'s cues, anticipate problematic scenarios, and diffuse them. Mother still did not appear to understand or accept her role in E.F.'s behaviors and was very resistant to feedback offered by the social worker and a therapist.

In a second addendum report in October 2018, Agency stated that E.F.'s foster placement was in jeopardy because of E.F.'s negative behaviors that increased after

contact with Mother. Mother and E.F. were scheduled to begin the IF program in late October. Agency did not believe it was appropriate to increase E.F.'s contact with Mother.

At the October 2018 contested section 387 jurisdiction and disposition hearing, the court received in evidence Agency's reports. The court also heard testimony from Todd Clark (an Agency social worker), Mother, Mother's therapist, and various percipient witnesses. Clark testified he had been assigned to E.F.'s case for eight months. He testified that in late March 2018, E.F. began a 60-day trial visit with Mother. At about that time, Mother had completed her court-ordered therapy and he had received positive input from Mother's service providers. During the trial visit, Mother raised issues regarding E.F.'s tantrums. Clark attempted to assist Mother by obtaining information regarding what transpired before the tantrum and encouraging Mother to use the skills or techniques she had learned from service providers. Mother requested that E.F. be assessed in a residential facility and that the family receive in-home TBS services. E.F. was transitioning from a Lemon Grove therapist to a new therapist in Fallbrook. He stated that the new therapist would take over any referral for TBS services. It was important to allow E.F. to transition to her new therapist before beginning TBS services.

Clark further testified that E.F.'s behavioral triggers included persons blaming her, a lack of fairness, long car rides, being hungry or bored, and transitions. E.F. generally behaved well Mondays through Wednesdays, but her tantrums and negative behaviors increased after visits with Mother on Thursdays.

An in-home caregiver for E.F.'s two special needs siblings testified that she had seen E.F. have four or five tantrums. Although Mother attempted to redirect E.F., she sometimes was not appropriate in her response and became frustrated. Yet, Mother never physically disciplined E.F. Likewise, one of the past monitors of Mother's supervised visits with E.F. testified that she had seen Mother respond calmly and patiently to E.F.'s behavior.

Mother testified that she had not told the Agency social worker that she was not equipped to handle E.F.'s special needs. She had completed the intake appointment for the IF program and the first IF session was scheduled for the following day. During an IF session, therapists would observe the parent-child interactions of five different families for two hours and then the families would have dinner. After dinner, the parents would go to a parenting class and the children would return to their foster homes. Mother testified that before E.F.'s dependency case began, she (Mother) had received DBT therapy and learned techniques regarding how to de-escalate tantrums. When E.F. was returned to her care for the 60-day trial visit, Mother used the techniques she had learned from her therapist (e.g., to redirect E.F. and not engage with her).

Mother's therapist testified that she provided Mother with individual therapy from November 2017 through June 2018. Mother made progress and successfully completed her therapy. On a couple of occasions, the therapist observed Mother with E.F. On one occasion, E.F. became agitated and began to throw a tantrum, and Mother was able to calm her down. On another occasion, E.F. had a screaming fit and tried to run away. Although police were called, Mother was very calm and tried to calm down E.F.

After hearing arguments of counsel, the court sustained the section 387 petition and removed E.F. from her parents' physical custody pursuant to section 361, subdivision (c)(1). The court found, inter alia, there was or would be a substantial danger to E.F.'s physical health, safety, protection, or physical or emotional well-being if she were returned home, and there were no reasonable means by which her physical health could be protected without removing her from her parents' custody. The court incorporated by reference the recommendations in Agency's detention report, including a recommendation that the court find that Agency made reasonable efforts to prevent or eliminate the need for E.F.'s removal from Mother's home. The court ordered that E.F. be placed in licensed foster care. The court set a date for E.F.'s 12-month permanency hearing.

In an addendum report, Clark stated that E.F. had refused to attend the first IF session in late October. She also refused to attend a scheduled visit with Mother in late October. Clark stated that E.F.'s refusal to attend the IF session and scheduled visitation would be addressed in therapy.

At the November 2018 12-month permanency hearing, the court considered all of the evidence presented at the section 387 jurisdiction and disposition hearing and Agency's subsequent addendum report. Agency's counsel argued that based on the totality of the circumstances, the court should find that Agency had provided reasonable reunification services to the parents. Mother's counsel argued that she (Mother) had not been provided with reasonable services and asked that E.F. be returned to her custody with family maintenance services. E.F.'s counsel argued that the totality of the evidence

showed that Agency had provided reasonable services. E.F.'s counsel stated that E.F. wanted to go home. The court found by clear and convincing evidence that return of E.F. to her parents' care would be detrimental to her and that reasonable reunification services had been provided to the parents that were designed to aid the parents in alleviating or mitigating the causes of E.F.'s dependency case. The court set a date for E.F.'s 18-month permanency hearing.

Mother timely filed notices of appeal challenging the court's orders at the section 387 jurisdiction and disposition hearing and the 12-month permanency hearing.

DISCUSSION

I

Substantial Evidence to Support Section 387 Disposition Order

Mother contends there is insufficient evidence to support the juvenile court's findings at the section 387 disposition hearing that there were no reasonable means by which E.F.'s physical health could be protected without removing her from Mother's physical custody and that Agency made reasonable efforts to prevent or eliminate the need for E.F.'s removal.

A

A section 387 supplemental petition must be filed by Agency to obtain an order to change or modify a previous order by removing a child from the physical custody of a parent and directing placement of the child in a foster home. (§ 387, subds. (a), (b); Cal.

Rules of Court, rule 5.560(c);[4] *In re T.W.* (2013) 214 Cal.App.4th 1154, 1161 (*T.W.*).) "In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child. (§ 387, subd. (b); rule 5.565(e)(1).) If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. (Rule 5.565(e)(2); [citation].) A section 387 petition need not allege any new jurisdictional facts, or urge different or additional grounds for dependency because a basis for juvenile court jurisdiction already exists. [Citations.] The only facts necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child. (§ 387, subd. (b); [citation].)" (*T.W.*, at p. 1161.)

"When a section 387 petition seeks to remove a minor from parental custody, the court applies the procedures and protections of section 361. [Citation.]" (*T.W.*, *supra*, 214 Cal.App.4th at p. 1163.) In so doing, "the court must apply one of the applicable standards found in section 361, subdivision (c). [Citations.]" (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462 (*Javier G.*).) Section 361, subdivision (c)(1), which the juvenile court applied in this case, provides the court must find, by clear and convincing evidence, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and

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4 All references to rules are to the California Rules of Court.

there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

At a section 387 disposition hearing, "Agency has the burden of proof to show reasonable efforts were made to prevent or eliminate the need for removal. [Citations.]" (*Javier G., supra*, 137 Cal.App.4th at p. 463.) Section 361, subdivision (e) provides: "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . ." The adequacy of reunification plans and the reasonableness of Agency's efforts in implementing those plans are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164 (*Robin V.*).) Agency must make a good faith effort to develop and implement a reunification plan. (*Ibid*.) "[T]he record should show that [Agency] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . ." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).)

On appeal, when the appellant challenges a finding by the court that Agency provided the appellant with reasonable reunification services or made reasonable efforts to prevent or eliminate the need to remove a minor, we apply the substantial evidence standard of review. (*In re A.G.* (2017) 12 Cal.App.5th 994, 1001; *In re Henry V.* (2004)

119 Cal.App.4th 522, 529; *Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625-626.) Evidence is substantial if it is reasonable, credible, and of solid value. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.]" (*T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162.) The testimony of a single credible witness may be sufficient evidence. (Evid. Code, § 411.) The appellant has the burden on appeal to show there is insufficient evidence to support the court's findings or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 (*L.Y.L.*).)

B

In challenging the juvenile court's section 387 disposition order, Mother argues there is insufficient evidence in the record to support its findings that there were no reasonable means by which E.F.'s physical health could be protected without removing her from Mother's physical custody and that Agency made reasonable efforts to prevent or eliminate the need for E.F.'s removal. We disagree.

We first address Agency's argument that Mother forfeited her claim that Agency did not make reasonable efforts to provide reunification services because she did not timely raise that issue in the juvenile court. In *In re Christina L.* (1992) 3 Cal.App.4th 404 (*Christina L.*), at page 416, we stated: "If Mother felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan: ' "The law casts upon the

party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal." [Citation.]' [Citation.]"

In this case, the court initially ordered reunification services for Mother at the August 2017 detention hearing. At the January 2018 jurisdiction and disposition hearing, the court again ordered reunification services for Mother. At the July 2018 section 387 detention hearing, the court again ordered reunification services for Mother. At the October 2018 section 387 jurisdiction and disposition hearing, Mother's counsel implicitly argued that the reunification services provided to Mother were inadequate, stating: "[O]n March 30th, when the trial visit started[,] . . . there were no services. And the testimony and the evidence is that my client tried a multitude of times to talk the social worker into allowing her to get different therapies for the family because she knew things were starting to go bad. She asked for the TBS services. She asked for conjoint therapy." It was not until the November 2018 12-month permanency hearing (i.e., after the section 387 jurisdiction and disposition hearing) that Mother's counsel expressly argued that reasonable services had not been offered to Mother.

By waiting until the October 2018 section 387 jurisdiction and disposition hearing to inform the juvenile court of her concerns regarding the timeliness or types of reunification services provided to her, Mother forfeited any claim on appeal that Agency did not make reasonable efforts to timely provide reasonable reunification services to her

from August 2017 through October 2018 and, in particular, during E.F.'s trial visit with Mother that began in late March 2018. (*Christina L.*, *supra*, 3 Cal.App.4th at p. 416.) "If [Mother] had brought this matter to the attention of the juvenile court, the court could have remedied any error." (*In re Desiree M.* (2010) 181 Cal.App.4th 329, 334 (*Desiree M.*).) As Agency argues, if Mother believed the reunification services provided to her were inadequate or were not being timely provided, her counsel could have, and should have, promptly raised that issue with the juvenile court in a special hearing. Because she did not do so, we conclude she has forfeited any challenge to the court's section 387 disposition hearing finding that Agency made reasonable efforts to provide reasonable reunification services to her. (*Christina L.*, at p. 416.) To the extent Mother argues that she asked Clark or other Agency social workers for TBS therapy, conjoint therapy, in-home services, or other additional reunification services before or after E.F. was placed with her for the trial visit, she does not show she or her counsel promptly raised her purported need for additional reunification services with the juvenile court and therefore does not show she did not forfeit her challenge to the court's finding. As we stated in *Christina L.*: "If Mother felt during the reunification period that the services offered her were inadequate [or not timely provided], she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan [or obtaining more timely services]." (*Ibid.*)

In any event, if Mother did not forfeit her challenge to the court's section 387 hearing findings, we nevertheless conclude there is substantial evidence in the record to support its findings that there were no reasonable means by which E.F.'s physical health

could be protected without removing her from Mother's physical custody and that Agency made reasonable efforts to prevent or eliminate the need for E.F.'s removal. Mother's primary assertion is that Agency unduly delayed in-home services, such as TBS therapy, and therefore did not make reasonable efforts to provide her with reasonable reunification services.

At the section 387 jurisdiction and disposition hearing, Clark, Agency's social worker, testified regarding the reunification services provided to Mother and the family. He testified that E.F. was returned to her family home for a trial visit that began in late March 2018, and ended on her removal in early July. At about the time the trial visit began, Mother had completed her individual therapy and he had received positive feedback regarding Mother's behavior during her visits with E.F. During the first 60 days of the trial visit, Mother raised concerns with him regarding E.F.'s tantrums. He attempted to assist Mother by suggesting she use the skills or techniques that she had learned in services she had already received. He also asked Mother what happened before E.F.'s tantrums. E.F. was also transitioning from her Lemon Grove therapist to a new therapist located in Fallbrook.

During the trial visit, Mother frequently and consistently requested that E.F. be assessed in a residential facility and also requested in-home TBS services. In May, a CFT meeting was held regarding Mother's requests for services. Although both therapists at the CFT meeting informed Clark that a TBS referral needed to come from the therapist, the CFT meeting facilitator stated that a child's therapist did not have to recommend TBS services. Nevertheless, because E.F.'s prior therapist had not referred E.F. for TBS

services and her new therapist indicated that she wanted to take the lead on that referral, Clark decided to wait for E.F.'s new therapist to make the referral because the providers of TBS services would be working in conjunction with the new therapist. He explained that because TBS services would be based on what a therapist saw and heard, input from E.F.'s new therapist was crucial.

The day following the CFT meeting, Clark discussed with E.F.'s new therapist the initiation of a referral for TBS services and that therapist stated she wanted to take the lead on that referral. In his professional opinion, Clark believed that E.F.'s transition from her prior therapist to her new one was more important than TBS services and that transition needed to occur before any new services could be established. Clark had never worked with TBS services before. His understanding was that a TBS therapist views interaction between the parent and child in the home and then offers feedback to both of them. Although a TBS therapist was found and an intake session occurred, only one TBS therapy session occurred before E.F. was removed from Mother's care in early July 2018.[5]

When asked by Mother's counsel what services Agency provided during the three-month trial visit, Clark replied that he attempted to make sure E.F. continued to go to therapy, but she did not. He made monthly compliance visits for both the parents and E.F. He continued to make assessments of E.F.'s safety. Because he knew Mother had

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[5] That TBS therapy session apparently occurred about two days before E.F.'s removal from the family home.

completed her case plan services, he was making assessments regarding what possible future services should be provided to her.[6] When asked by Mother's counsel whether it might have been beneficial to get TBS services to Mother and E.F. earlier to avoid E.F.'s removal, Clark replied that it was his intention to have a professional observe their in-home behaviors, but it had to be in a natural, therapeutic progression. Based on his discussion with Mother's therapist after completion of her therapy, Clark believed the therapist's conclusion was incomplete because she had not observed interactions between Mother and E.F.

Clark had three primary concerns regarding Mother: (1) she seemed to have an inability to make behavioral changes; (2) she needed to demonstrate an understanding of how her behavior impacts E.F. and show what changes she (Mother) would make; and (3) her lack of insight as to how she impacts E.F. and how her words may be escalating E.F.'s negative behaviors. Clark believed Mother needed feedback from a therapeutic professional who had observed interaction between Mother and E.F. regarding concrete, real-world examples. That feedback could be provided through TBS services, the IF program, visitation monitors, himself, and others. Clark testified that he was committed to offering appropriate reunification services to the family.

Based on Clark's testimony, there is substantial evidence to support the juvenile court's finding at the section 387 hearing that Agency made reasonable efforts to prevent

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[6] Clark also was working on services for Father that he had not completed or engaged in.

or eliminate the need for E.F.'s removal from the family home. In particular, contrary to Mother's assertion, the court could reasonably infer from the evidence that even if in-home services, such as TBS therapy, had been provided earlier than they were, it would not have prevented the need to remove E.F. from the family home for her safety and protection. The court found that Agency had provided appropriate reunification services, but stated that those services "just have not taken traction right now."

Referring to Mother's psychological evaluation, the court noted Mother could have a traumatic brain injury that could result in her irritability and affect her cognitive functioning. It also noted that Mother had an elevated score on the child abuse potential inventory (i.e., a score of 206 compared to the normative score of between 40 and 60). The court stated that if you combine that score with how E.F. reacts to Mother, "it's very clear that [Mother] has not yet gotten the insight. That doesn't mean she's not capable of getting it. It just means that she has not yet gotten it." The court recognized that this is a complex case and E.F. "has a complex constellation of difficulties that requires a carefully constructed, measured and consistent environment." It stated that at that point in time Mother had not yet been getting the insight necessary to provide E.F. with the consistency, responsiveness, structure, and patience that E.F. needs. Accordingly, the court could reasonably conclude that even if in-home services had been provided to Mother and E.F. earlier than they were, it would not have prevented the need to remove E.F. from the family home at the time of the section 387 hearing.

Mother has not carried her burden on appeal to show there is insufficient evidence to support the court's section 387 hearing findings. To the extent Mother cites evidence

and inferences therefrom that are favorable to her and, in particular, argues it would have been beneficial for TBS services, other in-home services, conjoint therapy, wrap-around services, or additional therapy for herself to have been provided or provided more expeditiously, she misconstrues and/or misapplies the substantial evidence standard of review and does not show there is insufficient evidence for the court's finding that Agency made reasonable efforts and provided reasonable reunification services to prevent or eliminate the need for E.F.'s removal from the family home. (*T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162; *L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

In a perfect or ideal world, Mother and E.F. arguably could have been provided with additional services or more promptly provided with services. However, that is not the standard against which we review a juvenile court's finding that reasonable efforts were made to provide reasonable reunification services to prevent or eliminate the need for a child's removal. As *Misako R.* stated: "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) We conclude that in the circumstances of this case there is substantial evidence to support the court's findings that there were no reasonable means by which E.F.'s physical health could be protected without removing her from Mother's physical custody and that Agency made reasonable efforts to prevent or eliminate the need for E.F.'s removal. Accordingly, the court properly sustained the section 387 petition and removed E.F. from the family home.

To the extent Mother cites cases holding that juvenile courts had failed to adequately consider less drastic alternatives to removal of a child or that there was insufficient evidence to support findings that reasonable efforts were made to prevent and eliminate the need to remove a child, those cases are factually inapposite to this case and do not persuade us to reach a contrary conclusion. (See, e.g., *In re Hailey T.* (2012) 212 Cal.App.4th 139; *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*); *In re K.S.* (2016) 244 Cal.App.4th 327.) In particular, unlike in *Ashly F.*, the juvenile court in this case determined that Agency made reasonable efforts to prevent or eliminate the need to remove E.F. from the family home and explained the reasons for the need to remove her. (Cf. *Ashly F.*, at p. 810.)

II

Substantial Evidence to Support 12-Month Permanency Hearing Findings

Mother contends there is insufficient evidence to support the juvenile court's finding at E.F.'s 12-month permanency hearing that reasonable reunification services had been provided to Mother.[7] In so doing, she primarily restates the arguments discussed in section I, *ante*.

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7 Although Mother separately contends the court's finding that reasonable reunification services were provided is appealable, Agency does not dispute, and we conclude, that the court's finding is appealable and therefore we need not address the specifics of that contention. (See, e.g., *In re T.G.* (2010) 188 Cal.App.4th 687, 696.)

A

At a 12-month permanency hearing, a juvenile court must, inter alia, determine, by clear and convincing evidence, whether reasonable services designed to aid the parent to overcome the problems that led to the child's removal and continued custody of the child have been provided or offered to the parent. (§ 366.21, subds. (f)(1)(A), (g)(1)(C)(ii); *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Agency must make a good faith effort to develop and implement a reunification plan. (*Robin V.*, *supra*, 33 Cal.App.4th at p. 1164; *In re Jasmon O.* (1994) 8 Cal.4th 398, 424.) The adequacy of reunification plans and the reasonableness of Agency's efforts in implementing those plans are judged according to the circumstances of each case. (*Robin V.* at p. 1164.) Again, the standard is not whether the reunification services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

B

At the 12-month permanency hearing, the court found by clear and convincing evidence that reasonable services had been provided to the parents that were designed to aid the parents in alleviating or mitigating the causes of E.F.'s dependency case. Mother argues there is insufficient evidence in the record to support its finding that Agency provided Mother with reasonable reunification services. We disagree.

We first address Agency's argument that Mother forfeited her claim that Agency did not make reasonable efforts to provide reunification services because she did not timely raise that issue in the juvenile court. We incorporate our discussion in section I

(B) *ante* and conclude Mother forfeited her claim that the reunification services provided to her were inadequate or untimely provided by not promptly raising that claim *post*. By waiting until the October 2018 section 387 jurisdiction and disposition hearing to implicitly inform the juvenile court of her concerns regarding the timeliness or types of reunification services provided to her and until the November 2018 12-month permanency hearing to expressly raise that claim, Mother forfeited any claim on appeal that Agency did not make reasonable efforts to timely provide reasonable reunification services to her from August 2017 through October 2018 and, in particular, during E.F.'s trial visit with Mother that began in late March 2018. (*Christina L.*, *supra*, 3 Cal.App.4th at p. 416.) "If [Mother] had brought this matter to the attention of the juvenile court, the court could have remedied any error." (*Desiree M.*, *supra*, 181 Cal.App.4th at p. 334.) As Agency argues, if Mother believed the reunification services provided to her were inadequate or were not being timely provided, her counsel could have, and should have, promptly raised that issue with the juvenile court in a special hearing. Because Mother did not do so, we conclude she has forfeited any challenge to the court's 12-month permanency hearing finding that Agency provided reasonable reunification services to her. (*Christina L.*, at p. 416.) To the extent Mother argues that she asked Clark or other Agency social workers for TBS therapy, conjoint therapy, in-home services, or other additional reunification services before or after E.F. was placed with her for the trial visit, she does not show that she or her counsel promptly raised her purported need for additional or more expeditious reunification services with the juvenile court and therefore does not show she did not forfeit her challenge to the court's finding. As we stated in

Christina L.: "If Mother felt during the reunification period that the services offered her were inadequate [or not timely provided], she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan [or obtaining more timely services]." (*Ibid*.)

In any event, if Mother did not forfeit her challenge to the court's 12-month permanency hearing finding that Agency provided Mother with reasonable reunification services, we nevertheless conclude there is substantial evidence in the record to support that finding. As with Mother's challenge to the court's section 387 jurisdiction and disposition order, she primarily asserts there is insufficient evidence to support the court's 12-month permanency hearing finding that Agency provided reasonable reunification services because Agency unduly delayed implementation of in-home services, such as TBS therapy. However, as discussed *ante*, Agency provided Mother with parenting education, individual therapy, supervised visitation, CFT meetings, TBS therapy, IF program services, and a psychological evaluation to help determine her treatment needs. In determining whether Agency provided Mother with reasonable reunification services, the court stated at the 12-month permanency hearing:

> "In order for [E.F.] to make progress, she has to have a structured setting that is patient and ever vigilant regarding her conduct and behavior. That proved very difficult for [Mother] and [Father] in this case.
>
> "While the various foster placements did their best and in many respects had some success, [E.F.] still acted out, which again shows her diagnosis is very compelling. I don't believe TBS services or any further in-home services would have been sufficient based on the therapeutic information I have before me as well as the fact that there were in-home services that had been provided. So while I

> understand the frustration of the family, I understand their meaning in requesting those services, I don't find that the Agency's reaction to that was unreasonable under the circumstances.
>
> "I think the social worker did an admirable job on his own as additional guidance to the family to try to intervene and provide the structure or at least the hope for structure and the patience that was necessary to help [E.F.]."

Based on Clark's testimony at the section 387 jurisdiction and disposition hearing, as described *ante*, as well as Agency's reports, we conclude there is substantial evidence to support the court's finding that Agency provided Mother with reasonable reunification services. To the extent Mother cites evidence and inferences therefrom that are favorable to her and, in particular, argues it would have been beneficial for TBS services, other in-home services, conjoint therapy, wrap-around services, or additional therapy for herself to have been provided or provided more expeditiously, she misconstrues and/or misapplies the substantial evidence standard of review and does not show there is insufficient evidence for the court's finding that Agency provided reasonable reunification services to prevent or eliminate the need for E.F.'s removal from the family home. (*T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162; *L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

In a perfect or ideal world, Mother and E.F. arguably could have been provided with additional services or more promptly provided with services. However, that is not the standard against which we review a juvenile court's finding that reasonable efforts were made to provide reasonable reunification services to prevent or eliminate the need for a child's removal. The standard is not whether the reunification services provided

were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances. (*Misako R., supra,* 2 Cal.App.4th at p. 547.) Therefore, we conclude that in the circumstances of this case, there is substantial evidence to support the court's finding at the 12-month permanency hearing that Agency provided Mother with reasonable reunification services.

The cases cited by Mother in support of her argument are factually and/or procedurally inapposite to this case and do not persuade us to reach a contrary conclusion. (See, e.g., *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229 (*T.J.*); *In re M.F.* (2019) 32 Cal.App.5th 1 (*M.F.*).) In *T.J.*, by the six-month review hearing, the mother had been provided with only visitation and was not provided with individual therapy until 11 months after her children's removal. (*T.J.*, at pp. 1242, 1244.) Also, despite the mother's intellectual disability and poverty, the agency did not provide her with any assistance in obtaining suitable housing. (*Id*. at p. 1248.) In *M.F.*, we concluded there was substantial evidence to support the juvenile court's finding that Agency had not provided the father with reasonable reunification services. (*M.F.*, at p. 7.) In particular, the therapists on the list provided by the social worker were inaccessible to the father and the social worker did not timely assist him in obtaining a therapist. (*Id*. at pp. 15-16.) Therefore, the cases cited by Mother are factually and/or procedurally inapposite to this case and do not persuade us to reach a contrary conclusion.

DISPOSITION

The juvenile court's orders issued at the section 387 disposition hearing and 12-month permanency hearing are affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.